

FILED
Clerk
District Court

OCT 29 2007

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JOHN S. PANGELINAN,)	Civil No. 07-0027
)	Criminal No. 06-00012
Plaintiff)	
)	
v.)	ORDER DENYING
)	FIRST 28 U.S.C. § 2255
UNITED STATES OF AMERICA,)	MOTION AS MOOT
)	
Defendant)	
_____)	

Plaintiff was convicted by a jury of two counts of obstruction of a court order, in violation of 18 U.S.C. § 1509. By memorandum opinion issued October 11, 2007, the U.S. Court of Appeals for the Ninth Circuit affirmed one conviction and reversed the other. Memorandum Opinion, No. 07-10032.

1 Prior to the issuance of the opinion of the Ninth Circuit, pro se plaintiff had
2 moved pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. The
3 court received and filed plaintiff's motion on August 22, 2007.

4
5 By order dated August 24, 2007, the court denied plaintiff's § 2255 motion on
6 the ground that it lacked subject matter jurisdiction because plaintiff's appeal of his
7 criminal convictions were then still pending before the Ninth Circuit. The denial was
8 without prejudice. The court also directed the Clerk's Office to accept no more 28
9 U.S.C. §2255 filings from plaintiff until the appeal had been decided.

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11
12 On September 25, 2007, the court received and filed plaintiff's motion for
13 reconsideration of the court's August 24, 2007, order denying his § 2255 motion.

14 On September 28, 2007, the court again received another, identical copy of the
15 28 U.S.C. § 2255 motion it had first received from plaintiff on August 22, 2007.
16 Because the motion was filed in direct contradiction of the court's order, it was
17 returned to plaintiff.
18

19
20 On October 11, 2007, the court issued an order denying plaintiff's motion for
21 reconsideration.

22 On October 25, 2007, the court received another 28 U.S.C. § 2255 motion.
23 On page two, plaintiff acknowledged that he has fully served his one-year
24 imprisonment as of September 16, 2007, but is "still imprisoned."
25

26 As of October 26, 2007, the court was advised by the Probation Office that

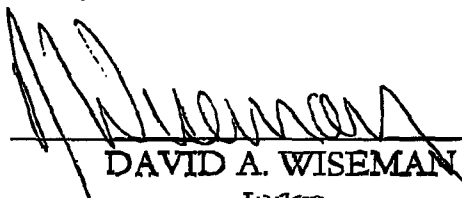
1 plaintiff remains incarcerated solely because he refuses to sign the required
2 "Agreement to Adhere to Installment Schedule Agreement for Unpaid Fines." The
3 Bureau of Prisons cannot release an inmate who refuses to sign the agreement and
4 may keep him incarcerated for up to an additional two years. The court is further
5 advised that, as of this date, upon release plaintiff is facing a detainer filed by the State
6 of Washington.
7

8
9 Because plaintiff has fully served the one-year sentence of imprisonment
10 imposed upon him, he is no longer "in custody" for a reason directly related to his
11 criminal sentence and he cannot seek relief under 28 U.S.C. § 2255. See 28 U.S.C. §§
12 2241(c), 2254(a), 2255; Zegarra-Gomez v. I.N.S., 314 F.3d 1124, 1126-27 (9th Cir.
13 2003). An expired or completely served sentence does not meet the "in custody"
14 requirement, even if that sentence could subsequently be used to enhance a future
15 sentence, unless the petitioner is serving the second of consecutive sentences (which
16 plaintiff here is not). Garlone v. Fordice, 515 U.S. 39, 45-46, 115 S.Ct. 1948 (1995).
17

18 Accordingly, for the foregoing reasons, this motion is denied as moot.
19

20 IT IS SO ORDERED.
21

22 DATED this 29 day of October, 2007.
23

24
25 
26 DAVID A. WISEMAN
Judge